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September 26, 2012

**BY HAND**

Jeff S. Jordan, Esq.  
Supervisory Attorney  
Complaints Examination & Legal Administration  
Federal Election Commission  
999 E Street N.W.  
Washington, D.C. 20463

**Re: Matter Under Review 6617**

Dear Mr. Jordan:

On behalf of Christie Vilsack, Christie Vilsack for Iowa, and John Kibbie, Treasurer (collectively, "Respondents"), we submit this letter in response to the complaint filed by James E. Black (the "Complaint"). The Complaint claims that House Majority PAC ("HMP") and the American Federation of State, County and Municipal Employees ("AFSCME") violated the Act and Commission regulations by creating advertisements supporting Christie Vilsack's candidacy, and that Respondents received a prohibited in-kind contribution as a result.

The Complaint alleges no violation by Respondents. It is premised on two mistakes of law. First, it erroneously contends that Respondents received a prohibited contribution because HMP and AFSCME republished Ms. Vilsack's campaign materials; Commission regulations provide expressly that a candidate receives no contribution when her materials are independently republished. Second, the claim that HMP and AFSCME republished campaign materials is itself erroneous. The advertisements clearly express the groups' own views, and their use of campaign footage falls short of that even in other matters in which the Commission has taken no action. The Commission should dismiss this matter.

**FACTUAL BACKGROUND**

Christie Vilsack is a candidate for the United States Congress from the Fourth District of Iowa. Her principal campaign committee is Christie Vilsack for Iowa, and Mr. Kibbie is its treasurer.

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ANCHORAGE • BEIJING • BELLEVUE • BOISE • CHICAGO • DALLAS • DENVER • LOS ANGELES • MADISON • NEW YORK  
PALO ALTO • PHOENIX • PORTLAND • SAN DIEGO • SAN FRANCISCO • SEATTLE • SHANGHAI • WASHINGTON, D.C.

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On July 18, 2011, shortly after Ms. Vilsack became a candidate, her campaign posted a one minute, forty-eight second Internet video in which she discussed the need for communication, compromise, and improved energy and broadband policies ("the Campaign Video"). The Campaign Video remains publicly available online, at <http://www.youtube.com/watch?v=YLo7GqhQFEM>.

More than a year later, on July 23, 2012,<sup>1</sup> HMP and AFSCME began airing television advertisements in support of Ms. Vilsack ("the Advertisements"). The Complaint makes no allegation that the Advertisements were coordinated with Ms. Vilsack or her campaign. It alleges none of the necessary "conduct" elements for a coordinated communication: no request, suggestion or intent; no material involvement; no substantial discussion; no use of a common vendor; and no use of a former employee or independent contractor.<sup>2</sup>

A cursory review of the ads makes clear that they were prepared independently of the Campaign. They are different than the Campaign Video in concept, stressing Ms. Vilsack's background as a teacher and her record of securing crucial education funding. They use an original script, original on-screen text, and original background video.

The Advertisements contain approximately twelve seconds of background footage that appears identical to the B-roll footage in the Campaign Video. The footage does not appear as a block, but rather as three separate interspersed segments. Each segment is different than the Campaign Video, insofar as it is accompanied by the script, narration, and on-screen text that were developed by HMP and AFSCME.

### LEGAL ANALYSIS

The Complaint fails to allege a violation by Respondents. It errs as a matter of law by saying that HMP and AFSCME, by republishing Ms. Vilsack's campaign materials, made an illegal in-kind contribution which the Vilsack campaign was "prohibited from" receiving.<sup>3</sup> In fact, Commission regulations provide just the opposite. They state explicitly that, even if HMP and AFSCME had republished Vilsack campaign materials, the Vilsack campaign would have received no contribution, unless the communication were otherwise coordinated: "The candidate

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<sup>1</sup> The Complaint alleges first that the Vilsack video was posted on July 18, 2011, and that the HMP and AFSCME ads were distributed on July 23, 2012. See Complaint at 1. The Complaint then erroneously – and inexplicably – contends that the Campaign Video was published "not one week earlier" than the HMP and AFSCME Advertisements. Complaint at 3.

<sup>2</sup> See 11 C.F.R. § 109.21(d) (2002).

<sup>3</sup> Complaint at 3.

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who prepared the campaign material does not receive or accept an in-kind contribution, and is not required to report an expenditure, unless the dissemination, distribution, or republication of campaign materials is a coordinated communication under 11 C.F.R. 109.21 or a party coordinated communication under 11 C.F.R. 109.37.<sup>4</sup> The Complaint alleges none of the conduct necessary for a coordinated communication, and hence would fail to present a violation by Respondents even if all of its allegations were true.

The Complaint errs also in its claim that AFSCME and HMP republished Ms. Vilsack's campaign materials. The ad on its face is plainly an expression of the sponsors' own views; at issue is their use of three short, isolated segments of B-roll from a publicly available web video. The Commission has declined to pursue enforcement under similar circumstances, involving the use of even more candidate footage.<sup>5</sup> Under these circumstances, the Commission should not pursue an investigation that would inevitably impact Respondents, even in the absence of any valid allegation against them.

For these reasons, the Complaint against Respondents must be immediately dismissed.

Very truly yours,



Brian G. Svoboda  
Lauren T. Mehta

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<sup>4</sup> 11 C.F.R. § 109.23(a).

<sup>5</sup> See MUR 6357 (American Crossroads ad involving 15 seconds of candidate footage); MUR 5879 (DCCC advertisement involving 15 seconds of candidate footage)

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